

# Notice of Allowability

Application No.

10/749,430

Examiner

Robert J. Sandy

Applicant(s)

SMITH, KENNITH

Art Unit

3677

*[Handwritten signature]*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the application filed on 12/31,2003.
2. ☒ The allowed claim(s) is/are 1-19.
3. ☒ The drawings filed on 31 December 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 3/12/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 08302004 .
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Robert J. Sandy  
Primary Examiner  
Art Unit: 3677

Art Unit: 3677

This communication is responsive to Application/Control Number 10/749,430 filed on 31 December 2003, which is a continuation application of Serial No. 09/943,533 filed on August 30, 2001, now abandoned.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Phillip L. Kenner (Reg. No. 22,353) on August 30, 2004.

The application has been amended as follows:

In the specification, on page one, the first sentence after the title ("RUBBER BAND RETAINER APPARATUS") has been changed to - - This application is a continuation of U.S. Serial No. 09/943,533 filed on August 30, 2001, now abandoned. - -.

In claim 3, line 1, "claim12" has been changed to - - claim 1 - -.

### **REASONS FOR ALLOWANCE**

Claims 1-19 are allowed.

The following is an examiner's statement of reasons for allowance:

Filed claims 1-19 of the instant application are duplicate claims of claims 12-30 that were pending in application Serial No. 09/943,533, as of 19 August 2003 and prior to its abandonment on 24 June 2004 due to Applicant's failure to timely file a proper reply to the Office letter mailed on 05 March 2003. Applicant's Remarks filed on 19 August 2003 in the 09/943,533 application are incorporated by reference for the reasons for allowance. Particularly, applicant's remarks on page 5, last paragraph, filed 8/19/2003, pertaining to the Campbell reference (U. S. Patent No. 4,991,265) not having the required notch structure have been reprinted below

The Office Action now contends that the Campbell "tie device" discloses a "continuous" elastomeric band (22). Element 22 of the Campbell patent is the flexible strap 22 having strap segments 23 with spaced disks 24 therealong. The flexible strap 22 is a member of finite length and is not "continuous" or "endless", as specified in Applicant's claims. The above-asserted disclosure of the Campbell patent is also said to disclose a "substantially cylindrical retainer 26." In the Campbell patent, the head 26 is a flat, truncated, triangular member and is in no way a cylindrical retainer, such as Applicant's cylindrical retainer member 5. In addition, the tabs A and B of the Campbell patent cannot be said to extend "axially" of said retainer over the band-receiving portion of the notch therein. It is not appreciated that there is an axial orientation of Campbell's retainer 26 and to the extent such might exist, tabs A and B would appear to extend laterally thereof, rather than axially of the

Page 5 of 9

Application N. : 09/943,533  
Amendment dated: August 19, 2003  
Reply to Office Action of March 5, 2003

length of the cylindrical retainer 26. Thus, Applicant contests the above-quoted identification of structure allegedly anticipating all claims rejected as anticipated, except for claims 29 and 30.

, and that applicant's claimed band requires a uniform width, from which Campbell ('265) does not have, as applicant has remarked on page 6 in the paragraph reprinted below.

It is also noteworthy that the recitation of "an elastomeric band" in claim 12 contemplates a "continuous" or "endless" band, by definition. *Webster's Third International Dictionary* defines "band" in the context of a thin, flat, encircling strip, strap or flat band of material serving chiefly to bind or contain something as "a ring or endless strip of elastic (as for holding or compressing wrapping or keeping small objects together)." Thus, the recitation in claim 12 of "band" as being "a ring or endless strip of elastic" coupled with the specification of a "uniform width" uniquely confines a conventional rubber band, as contemplated by the present invention. These limitations also clearly patentably distinguish claim 12 over the Campbell patent.

Page 6 of 9

In summary, the prior art of record fails to teach or suggest a wrap having the structural combination of at least having a retainer defining a notch for receiving the widthwise portion of the elastomeric band, wherein the notch has a first tab extending

Art. Unit: 3677

axially of said retainer over the band receiving portion of the notch and defining a mouth portion of the notch, wherein the mouth portion has a width less than the width of the band.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Differences between the instantly claimed wrap and the wrapping devices by Countryman (U. S. Patent No. 3,721,750), D'Addario (U. S. Patent No. 6,543,094), Barber (U. S. Patent No. 4,689,858), Lagardere et al. (U. S. Patent No. 4,237,174) are: Countryman ('750) fails to have the uniform width band and the retainer structure requiring a first tab extending axially of said retainer over the band receiving portion of the notch and defining a mouth portion of the notch, wherein the mouth portion has a width less than the width of the elastomeric band. D'Addario ('094) fails to have the band having a uniform width substantially greater than its thickness, and the retainer requiring a first tab extending axially of said retainer over the band receiving portion of the notch and defining a mouth portion of the notch, wherein the mouth portion has a width less than the width of the elastomeric band. Barber ('858) and Lagardere et al. ('174) each fail to have a retainer structure including a first tab extending axially of said retainer over the band receiving portion of the notch and defining a mouth portion of the notch, wherein the mouth portion has a width less than the width of the elastomeric band.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is 703-305-7413. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ROBERT J. SANDY  
PRIMARY EXAMINER